

## **TEMPE CONVENTION AND VISITORS BUREAU, INC. AGREEMENT**

THIS AGREEMENT ("Agreement"), entered into by and between the Tempe Convention and Visitors Bureau, Inc., hereinafter referred to as "Bureau" and the City of Tempe, a municipal corporation, hereinafter referred to as "City", this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

### **W I T N E S S E T H**

WHEREAS, the Bureau will initiate, implement, and administer a comprehensive sales and marketing program designed to attract an increasing number of visitors and convention delegates to the City, thereby gaining revenues to the community and contributing to the overall economic growth of the Tempe business community and the City in general.

WHEREAS, the City originally adopted a 2% transient bed tax to be collected by motel and hotel operators, with the intention that portions of the proceeds therefrom be used to develop a tourist and convention promotional program in Tempe; and

WHEREAS, in September, 2002 the City adopted an increase in the transient bed tax from 2% to 3%, which became effective January, 2003; and

WHEREAS, in March, 2010 the City adopted an additional increase in the transient bed tax from 3% to 5%, which will become effective in July 2010; and

WHEREAS, pursuant to Arizona Revised Statutes § 9-500.06, the proceeds from the 2002 and 2010 increases in the transient bed tax are required to be used for the promotion of tourism; and

WHEREAS, the City and Bureau desire to establish a general framework for future cooperative efforts, especially the general procedures by which the Bureau will prepare and carry out tourism and convention activities;

WHEREAS, the City and the Bureau desire to enter into a new agreement to replace any previous agreements and addenda relating to the transient bed tax and tourist and convention promotion in Tempe;

NOW, THEREFORE, in consideration of the foregoing, the City and the Bureau do mutually agree as follows:

#### **1. ADMINISTRATION**

- (a) The Bureau Bylaws are incorporated, by reference, into this agreement.

(b) The Bureau shall continue to operate as a 501(c)(6) non-profit corporation and be governed by a Board of Directors that has the ultimate authority for oversight and approval of the Bureau's programs.

(c) The Bureau shall utilize an accounting system which will comply with generally accepted accounting principles and with the provisions of AICPA audit guide for nonprofit corporations. The Bureau shall establish and maintain a line item budget that identifies expenditures from all funding sources.

(d) The City's designated contact with the Bureau shall be the Community Relations Manager/Director or his/her designee. The Community Relations Manager/Director shall coordinate the execution of this Agreement and any reports and correspondence from the Bureau shall be channeled through this individual.

## 2. SCOPE OF ACTIVITIES

(a) Promote tourist travel and Tempe in general and distribute material related thereto to ensure their most useful circulation.

(b) Designate, establish and operate visitor or tourist information centers in the City and elsewhere which furnish tourist information and literature about the City.

(c) Encourage tourist travel by giving publicity to points and places of City-wide interest, climatic and recreational advantages, the possibilities of successful pursuits and such other information as in the opinion of the Bureau tends to attract visitors to the City.

(d) Promote and develop the tourism business and develop a campaign of information, advertising, promotion, exhibition and publicity relating to tourism business, including the recreational, scenic and historical attractions of the City and disseminating such information to the public through various state, national and international media.

(e) Such other publicity contemplated shall be given through, but not limited to, the publication of maps, pamphlets and other descriptive material designed to carry out the purposes of this Agreement.

(f) Stimulate and encourage all local and state governmental agencies and all private persons and enterprises to participate and cooperate in the promotion of tourism and tourism development in the City.

(g) Perform research necessary to determine a long-range tourism development plan for the City.

(h) Advise with and make recommendations to the City Council on all matters concerning tourism.

(i) Maintain contact with tour operators serving the southwest to sell them on touring their tours through Tempe.

(j) Work with the state Office of Tourism to pinpoint advertising on a cooperative basis to “expose” Tempe, Arizona, as a visitor’s destination.

(k) Promote select special events designed to attract visitors to Tempe.

### 3. ANNUAL BUDGET

The Bureau shall submit to the City Council an annual line item budget approved by the Bureau’s Board of Directors, by June 1 of each year. Said budget will include a description of proposed programs and staffing requirements along with their respective budgeted amounts.

### 4. ANNUAL AUDIT

The Bureau shall provide the City an annual financial statement as compiled and reviewed by an independent CPA. The Bureau shall pay for all services rendered by the CPA. All reports (financial statements, audit reports, compliance and management letters, letters of internal control) from the CPA shall be submitted to the City’s Financial Services Director and Community Relations Manager/Director ninety (90) days after the end of the fiscal year (by 9/30) of each year.

### 5. REPORTS

(a) The Bureau agrees to report on the performance of its programs by submitting a report to the City at the end of the fiscal year. Said report shall be due 45 days after the close of the fiscal year and shall include an analysis of the effectiveness of the program, including a reasonable estimate of the financial impact of the program on the local economy.

(b) The City agrees to provide the Bureau an annual report outlining how the City used its portion of the funds generated by the transient bed tax to promote tourism. The report shall be due 45 days after the close of the fiscal year, and shall include a summary showing the City’s tourism related expenditures.

### 6. FUNDING

(a) Subject to the conditions as set forth in this Agreement, the City shall provide the following payments to the Bureau:

1. Beginning July 2010: the City shall provide annual funding to the Bureau in the amount of \$2,000,000 (hereinafter referred to as the “base”) which shall be paid over twelve (12) equal monthly payments on the first of each month.

2. An amount shall be provided in addition to the base amount in each subsequent year equal to the change in the U.S. Bureau of Labor Statistics, All Urban Consumers, West Urban Consumer Price Index (the "CPI") since the base year. The CPI adjustment is accumulated each year and that total percentage increase is added to the base amount. Thus if the CPI increased 1% during the first year of the Agreement, 2% during the second, and 1% during the third, the funding provided to the Bureau at the beginning of the fourth year would equal the base plus 4% (or \$2,000,000 \* 1.04).
3. The parties agree that the funding of the TCVB set forth in paragraph 1 above, shall never fall below the \$2,000,000 base, even in the event that there is a net decline in the CPI.

(b) The Bureau may submit for approval to the City Council an annual supplemental budget request to seek funds in addition to those set forth in paragraph (a) above, which may be approved at the sole discretion of the City Council.

## 7. HOLD HARMLESS AND INSURANCE PROVISIONS

The Bureau agrees to defend, indemnify and save harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, employees and insurance carriers, individually and collectively from all losses, claims, suits, demands, expenses, subrogation's, attorney's fees or actions of any kind and nature resulting from personal injury to any person (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of either (1) the Bureau's negligent performance of the terms of this contract, or (2) any of the Bureau's acts or omissions.

## 8. TERM

(a) The term of this Agreement is from July 1, 2010 to June 30, 2016 and shall be automatically extended for six additional years unless either party gives written notice to the other, on or before May 1, 2016 of its intent not to renew. In addition, either party may terminate this agreement at any time and for any (or no) reason, by providing written notice by to the other, on or before the 1<sup>st</sup> day of May, of its intent to terminate at the end of that fiscal year.

(b) If a party defaults in the performance of any of the covenants, agreements, terms or conditions of this Agreement and such default is not cured within 30 days after notice of such default is given by the non-defaulting party, or such longer period as may be necessary provided the defaulting party has commenced curing within such 30 days and diligently pursues such curing to completion, the non-defaulting party shall have the right, at its option, to immediately terminate this Agreement, whereupon it shall have no

further obligation or liability under this Agreement, or to seek full and adequate relief by injunction or other legal and equitable remedies (or all of the above).

**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the City of Tempe by its Mayor and City Clerk have hereunto subscribed their names this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF TEMPE

\_\_\_\_\_  
Mayor

TEMPE CONVENTION AND VISITORS  
BUREAU, INC.

\_\_\_\_\_  
President and CEO

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney